

Chapter 21.208

COMMERCIAL/VISITOR-SERVING
OVERLAY ZONE

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21.208.010 Intent and purpose.

The intent and purpose of the commercial/visitor-serving overlay zone is to supplement the underlying zoning by providing additional regulations for commercial/visitor-serving uses. The overlay zone is intended and designed to:

A. Control the location, operation and appearance of newly proposed commercial/visitor-serving uses within the overlay zone to prevent the over-proliferation of certain uses as well as to ensure high quality appearance and operation;

B. Maximize public disclosure about new commercial/visitor-serving use proposals located within the overlay zone;

C. Design compatibility, vehicular circulation and shuttle bus/alternative transportation options into commercial/visitor-serving uses within the overlay zone;

D. Provide for the review of building materials and colors and establish architectural criteria that discourages the use of corporate, standardized building forms, materials and styles;

E. Formalize the use of conditional use permits for all commercial/visitor-serving uses within the overlay zone and emphasize the aspects of performance monitoring and enforcement;

F. Establish the city council as the final decision-maker for commercial/visitor-serving uses in the overlay zone;

G. Require commercial/visitor-serving conditional uses as listed in the Planned Industrial (P-M) Chapter of this title for underlying P-M zoned properties within the overlay zone to be subject to the conditional use permit requirements and provisions of this chapter, except that such uses shall be consistent with the intent and purpose of the P-M zone whose primary purpose is not to cater directly to the general public, and allows certain commercial uses which cater to, and are ancillary to the uses allowed in the P-M zone; and,

H. Establish procedures in the overlay zone to provide for effective code enforcement. (Ord. NS-485 § 1 (part), 1999)

21.208.020 Definitions.

Terms used in this chapter and not defined below shall be defined per Chapter 21.04 of this title. The following terms, as used in this chapter, shall have the meaning established by this section:

A. "Applicant" means the property owner(s) of the site.

B. "Applicant's agent" means the authorized representative of the property owner responsible for processing the overlay zone conditional use permit.

C. "Commercial/visitor-serving use" means uses involving the provision of goods or services de-

signed primarily for tourists or visitors to the city, such as any of the following either individually or in combination: commercial development with retail sales; lodging uses; recreation vehicle (RV) parks, overnight RV parking, campgrounds or overnight campsite uses; sales of souvenirs, gifts or toys; activities including food and/or beverage serving uses. Commercial/visitor-serving uses include, but are not limited to: gas stations/mini-marts, hotels, motels, restaurants, delis, retail stores, gift shops, museums and visitor centers.

D. "Enforcement agency" means the city's community development department.

E. "Enforcement official" means the city's community development director.

F. "Freestanding sign" means a monument sign supported by the ground and not supported by a pole.

G. "Time-share project" means a project that meets the time-share definition contained in Section 21.04.357 of this title. Time share projects are distinguished between "lock-off" units and standard units for the purpose of establishing different parking requirements as outlined in Section 21.208.100(A)(2). "Lock-off" units are defined as a timeshare unit which allows the occupancy of less than the entire unit during a timeshare period such that each occupant may occupy a part of the unit for a timeshare period with the remaining part of the unit being "locked-off" and subject to use by others. Standard time share units do not have lock-off provisions. (Ord. NS-485 § 1 (part), 1999)

21.208.030 Boundaries—Exceptions—Applicability.

A. This chapter applies generally to all properties shown with the designation "commercial/visitor-serving overlay zone" on the zoning map as concurrently amended with the adoption of this chapter (pursuant to Section 21.05.050), as amended from time to time; excepting therefrom any properties used as automobile dealerships within the car country Carlsbad specific plan area, as amended from time to time.

B. Notwithstanding properties being within the boundaries of the overlay zone as established above,

the requirements for a conditional use permit, and the development standards of this chapter shall apply to:

1. Commercial/visitor-serving uses within the overlay zone; and

2. The portions of mixed use projects constituting a commercial/visitor-serving use.

C. Where the provisions of this chapter conflict with those of the underlying zone or elsewhere in this code, this chapter applies. (Ord. NS-485 § 1 (part), 1999)

21.208.040 Permitted uses.

Commercial/visitor-serving uses are permitted uses, in the overlay zone, if they meet the requirements of this chapter. The only permitted uses in the overlay zone are the residential, industrial and office uses authorized as permitted uses by the zoning of the underlying zone, which are not subject to the provisions of this chapter. Those uses shall be developed subject to the development standards and entitlement processes required by their underlying zoning. In addition, a roadside stand for the display and sale of products produced on the same premises is an allowed use provided that the floor area shall not exceed two hundred square feet and is located a minimum of twenty feet from any street, highway or city right-of-way. (Ord. NS-505 § 1, 1999; Ord. NS-485 § 1 (part), 1999)

21.208.050 Uses permitted by conditional use permit.

Commercial/visitor-serving uses may be permitted within the overlay zone by approval of conditional use permit pursuant to this chapter. Conditional uses otherwise allowed by underlying zoning designations, within the overlay zone, that are not commercial/visitor-serving uses, are not subject to this chapter. Where the underlying zoning authorizes conditionally approved uses (other than commercial/visitor-serving uses) Chapter 21.50, not this chapter, applies. (Ord. NS-485 § 1 (part), 1999)

21.208.060 Prohibited uses.

Notwithstanding any underlying zoning provision,

the following uses are prohibited in the overlay zone:

A. Stand-alone liquor stores where the retail sale of liquor and/or alcoholic beverages is the primary form of business;

B. The outdoor storage or display of merchandise, goods or services for sale;

C. Except as authorized pursuant to Chapter 8.17 and/or 8.32 of this code, or a conditional use permit issued pursuant to this chapter, no person shall sell or offer to sell goods, merchandise or services from, or by means of, any temporary display, vehicle, platform, wagon or pushcart upon any public street, privately owned property, public parking lot, city right-of-way or sidewalk within the overlay zone; and

D. Incidental outdoor dining areas (which waive parking requirements for small outdoor eating areas up to four hundred square feet in size) are prohibited. All indoor and outdoor eating areas shall provide parking as required by Section 21.208.100(A)(4) of this chapter. (Ord. NS-485 § 1 (part), 1999)

21.208.070 Approval process.

Notwithstanding Section 21.54.040, the city council may approve, conditionally approve or disapprove a conditional use permit within the overlay zone after the planning commission has considered the application and made a recommendation to the council pursuant to Chapter 21.54 and the special procedures added by this chapter. The conditional use permit may be approved for a limited period of time, and shall be subject to monitoring and enforcement pursuant to this chapter. (Ord. NS-485 § 1 (part), 1999)

21.208.080 Pre-filing submittal and meeting—Application for CUP.

A. Prior to filing an application for a conditional use permit for a commercial/visitor-serving use within the overlay zone, the applicant shall make a pre-filing project submittal and then attend a pre-filing meeting.

1. Pre-Filing Submittal. The applicant shall file a written pre-filing submittal and shall follow the

submittal requirements in accordance with the planning department's preliminary review process accompanied by the fee therefor, established by the city council by resolution. The submittal shall demonstrate compliance with this chapter, including the proposal of an architectural style as required by Section 21.208.100(F).

2. Pre-Filing Meeting. Within thirty days of the applicant's pre-filing submittal, the enforcement official shall respond with a written city response letter, thoroughly analyzing the proposal, establishing issues for resolution, and setting a time, date and place to conduct a pre-filing meeting subject to the following:

a) Required attendance: applicant or applicant's agent, staff planner and staff engineer;

b) Optional attendance: city manager or designated representative, any designated representative from a city department or division with an interest in, or concern with, the proposed commercial/visitor-serving development.

3. Primary purpose: discuss the city response letter, identify issues to be resolved and establish final application requirements.

B. Good faith participation in the pre-filing meeting, is necessary for the submittal of a formal conditional use permit application.

C. Upon completion of the pre-filing submittal and meeting, the applicant may file a formal application for a CUP pursuant to Chapters 21.50 and 21.54. The application shall be accompanied by application(s) for any other required discretionary entitlement for the project (including, but not limited to, a coastal development permit). Application for, and approval of, a CUP pursuant to this chapter shall satisfy all requirements for a site development plan, for the project if such is required by the underlying zoning. If not otherwise required, in addition to the application requirements for a conditional use permit (including special requirements in this chapter) formal conditional use permit application exhibits subject to this chapter shall show the following:

1. All State and Uniform Building Code requirements for disabled parking spaces and related pathways;

2. All proposed rooftop equipment, mechanical enclosures and any Uniform Building Code requirements relating to rooftop access, ladders or other rooftop structural features. (Ord. NS-485 § 1 (part), 1999)

21.208.090 Project site notification.

In addition to the public notice requirements of Section 21.54.060, the applicant shall provide project site notification as follows:

A. Upon city determination of completeness of a formal application, the applicant shall physically post the following notice on the project site. The applicant shall maintain the posted notice in good and legible condition until the application is withdrawn or scheduled for public hearing, whichever occurs first. Such notice shall state "APPLICATION IN PROCESS," and shall include:

1. A yellow color background;
2. A brief but complete explanation of the matter to be considered;
3. The applicant's name/phone number and applicant's agent's (if applicable) name and phone number;
4. Planning department contact information.

B. Concurrent with public noticing for a public hearing, the applicant shall physically post a notice on the project site for the entire term of the public notice period until, and inclusive of, the actual public hearing date. Such notice shall state "PENDING PUBLIC HEARING," and shall include the same information required above, but:

1. An orange color background; and
2. Date, time and place of pending public hearing.

C. Notices required by subsections A and B of this section shall comply with the following:

1. Sign location shall be in a conspicuous location so that the notice is visible from all portions of the project site which abut a private or public street.
2. Sign material shall be durable enough to withstand the elements. Signs shall be secured to a ground mounted pole with a minimum pole height of four feet and a maximum pole height of six feet.

3. Sign dimensions shall be four feet in height and three feet in length.

4. Letter height for the "APPLICATION IN PROCESS" or "PENDING PUBLIC HEARING" headings shall be six inches.

5. Letter height for the project descriptions shall be three inches.

6. All other letter heights shall be two inches.

7. All letter colors shall be black.

8. A city seal of the city of Carlsbad shall be displayed in the upper central portion of the notice with a minimum diameter of three inches.

9. Applicant or developer phrases or logos are not allowed.

10. Applicant must obtain project planner approval of color and text, prior to posting.

11. The public hearing notice shall be removed upon withdrawal of the application or completion of the public hearing process, whichever occurs first.

12. Any removed or damaged notices shall be immediately replaced. Failure to do so may cause the public hearing to be rescheduled by the enforcement official.

D. The planning director may modify any of the criteria listed above in subsections (C)(1) through (C)(7) of this section if determined necessary to achieve maximum disclosure of the project and/or to optimize visibility of the sign. (Ord. NS-485 § 1 (part), 1999)

21.208.100 Development standards.

Notwithstanding any underlying zoning provisions, the development standards below shall supersede other provisions of this title, and shall be applied to conditional use permits issued pursuant to this chapter.

A. Parking. The number of parking spaces required for commercial/visitor-serving uses within the overlay zone shall be calculated based on the ratios established below according to land use. Fractional parking spaces are to be rounded up to the nearest whole number. Compact space provisions are provided in Section 21.44.110 of this title. Any use not listed below and subject to the provisions of this chapter, shall be subject to a parking ratio to be

determined by the planning director based on the requirements of similar uses. The planning director's determination may be appealed in accordance with Section 21.54.140 of this title; or the determination may be incorporated into the project design and conditional use permit application. All State and Uniform Building Code requirements for disabled parking spaces and related pathways shall be shown on the conditional use permit application exhibits.

1. Motels/Hotels/Suites/Inns/Lodges/Resorts. 1.2 spaces per unit, plus parking as required per this chapter for additional ancillary uses (restaurant, retail space, meeting rooms, etc.) as calculated on an individual basis. In addition, these uses shall provide adequate shuttle bus circulation and passenger drop-off/pick-up facilities to be developed on a case-by-case, site-by-site basis. Tour bus/passenger bus parking provisions may also be required based on the specific project and location.

2. Time Share Projects. Lock-off units require 1.5 spaces per unit; standard units require 1.2 spaces per unit. In addition, time share projects shall be subject to the following requirements:

a. Adequate shuttle bus circulation and passenger drop-off/pick-up facilities to be developed on a case-by-case, site-by-site basis;

b. An interim parking/unit marketing plan which will address the initial sales efforts to sell time share units and the corresponding need to provide additional interim parking while sales are ongoing. The interim parking/unit marketing plan shall be approved by the city council as one of the approving project exhibits and shall indicate where interim parking is to be provided, the amount of spaces involved, adequate screening and landscaping, and the conversion or integration of the interim parking site into the overall time share project.

3. Gas Station/Mini-Mart. One space/three hundred square feet of gross floor area plus three additional employee parking spaces. Gas stations with work bays shall park the work bay areas at a ratio of four spaces for every work bay. In addition, gas stations shall conform to the use separation and design criteria contained in subsection (H)(1) of this section.

4. Restaurant. One space/one hundred square feet of gross floor area up to two thousand square feet. Two thousand square feet or greater: twenty spaces plus one space/fifty square feet in excess of two thousand square feet. Outdoor eating areas require one space/one hundred square feet of gross floor area specifically designed, designated and approved for outdoor dining. Recommended design features include adequate shuttle bus circulation and passenger dropoff/pick-up facilities in addition to tour bus/passenger bus parking provisions.

5. Coffee Shop/Beverage-Serving Use/Delicatessen. One space/three hundred square feet of gross floor area excluding seating areas for eating and/or drinking. Indoor and outdoor seating areas shall park at one space/one hundred square feet of area.

6. Meeting Rooms, Assembly Space, Convention Facilities. One space/one hundred square feet of gross floor area.

7. Individual Retail, Gift Shops, Toy Stores, Convenience Stores, General Sales. One space/three hundred square feet of gross floor area plus two additional employee parking spaces.

8. Shopping Center Retail. Minimum one space/two hundred square feet of gross center. Restaurants in shopping center projects shall provide separate parking as required above in subsection (A)(4) of this section.

9. Museums. One space/five hundred square feet of gross floor area plus a minimum of two additional employee parking spaces. In addition, museums shall provide adequate shuttle bus circulation, passenger drop-off/pick-up facilities, and tour bus/passenger bus parking provisions to be developed on a case-by-case, site-by-site basis.

10. Visitor/Information Center. One space/four hundred square feet of gross floor area plus two additional employee parking spaces. In addition, visitor/information centers shall provide adequate shuttle bus circulation, passenger drop-off/pick-up facilities, and tour bus/passenger bus parking provisions to be developed on a case-by-case, site-by-site basis.

11. Bed and Breakfast. Minimum two spaces, one of which shall be covered for the manager's unit, plus one space per guest room.

12. Car Rental Agencies. One space/two hundred fifty square feet of gross floor area for the car rental office space and customer waiting area. The rental car fleet parking shall be addressed through a fleet parking plan which will be reviewed and considered as part of the conditional use permit application. In addition, car rental agencies shall provide shuttle bus circulation and passenger drop-off/pick-up facilities to be developed on a case-by-case, site-by-site basis.

13. Movie Theaters. Proposals involving movie theaters shall submit land use and parking studies or other appropriate documents to justify the proposed parking provisions as part of the pre-filing submittal process per Section 21.208.080 of this chapter. At the close of the pre-filing submittal process, the planning director shall determine what the applicable parking ratios are. The applicant may appeal the planning director's decision in accordance with Section 21.54.140 of this title.

B. Signs. Except as provided herein, the provisions of Chapter 21.41 apply within the overlay zone. All signage shall be reviewed and approved as part of the conditional use permit process. No internally illuminated thru-face channel letter signs will be allowed to face residentially zoned properties.

1. Maximum Sign Area. The maximum sign area allowance shall not exceed one square foot per lineal foot of building frontage located on the lot. For corner lots or buildings, with two building frontages, sign allowance will be based on .90 square foot per the combined lineal footage. Shopping centers or other combined projects subject to the provisions of this chapter including projects that propose freeway service facility uses and signs, as defined in Sections 21.41.030(10)(A) and (B)(i-iv) and regulated by Section 21.41.070(3)(B), shall process a sign program as part of the conditional use permit. Freeway service facility center sign programs shall not allow more than a total of one hundred square feet of freestanding sign area for pro-

jects of eight acres or less; or one hundred fifty square feet of freestanding sign area for larger sites. Such sign programs may also allow a maximum of .60 square feet of wall signage per lineal foot of commercial tenant/suite frontage; a maximum of .90 square feet of wall signage per combined lineal footage of freestanding corner buildings; and, a maximum of one square foot of signage per lineal foot of freestanding or anchor tenant building frontage. Shopping centers or combined projects that do not propose freeway service facilities, shall be allowed a maximum of .75 square feet of wall signage per lineal foot of commercial tenant/suite frontage; a maximum of one square foot of wall signage per combined lineal footage of freestanding corner buildings; a maximum of one square foot of signage per lineal foot of freestanding or anchor tenant building frontage; and, a maximum of one hundred twenty-five square feet of additional freestanding signage.

2. Maximum Sign Height. No freestanding sign shall exceed six feet in height, except for freeway service facility signs; and freestanding multi-tenant directory signs for shopping centers and/or mixed use commercial/visitor-serving projects, which shall not exceed ten feet in height, pursuant to a city council approved sign program.

3. Sign Colors. Sign colors and materials are part of the discretionary review process. Sign colors shall complement the overall building style without dominating the building design.

4. Landscaping Related to Signs. Freestanding signs are subject to the landscaping requirements contained in subsection G of this section.

C. Building Height. The allowed building height for projects subject to this chapter shall be determined by the development standards of the underlying zoning. Any proposed rooftop equipment or other structural features shall be screened from public view.

D. Building Setbacks. Commercial/visitor-serving buildings located adjacent to Palomar Airport Road or Cannon Road east of the I-5 interstate freeway shall maintain a minimum setback of fifty feet. Except in the P-M zone, where the underlying zone

setback shall apply, new commercial/visitor-serving buildings shall maintain a minimum public street setback of thirty feet. All setback areas shall be exclusive of parking spaces, parking overhang, circulation aisles and trash enclosures. Improvements in this area shall be limited to landscaping, access driveway(s), signage, lighting fixtures, screen walls and pedestrian walkways or sidewalks. For parcels eight acres or less in size, the back ten feet of the required setback may be used as circulation aisles or parking spaces provided there is adequate use of landscaping and screen walls. The minimum building setback from any freeway right-of-way shall be thirty feet of which the back twenty feet may accommodate circulation aisles, trash and/or recycling enclosures, and/or parking spaces. All development proposals subject to this chapter shall provide decorative paving in the primary approach driveway to the project for an area of at least nine hundred square feet (thirty by thirty foot area) covering, at a minimum, the width of the driveway. The decorative paving shall be depicted on landscape plans and shall be located adjacent to, but not on, city right-of-way adjacent to the project entrance. Side and rear setbacks not subject to the thirty-foot public street setback shall be assessed as part of the discretionary review of the conditional use permit application, however, a minimum setback of ten feet entirely landscaped shall be required.

E. Building Materials/Colors. Building materials and colors are part of the discretionary review process. The use of illuminated awnings is not allowed. Metal awnings or canopies are not allowed. High quality simulated building materials such as imitation brick, stone, marble or wood may be approved. The primary colors of blue, red, yellow and green shall not be dominate building colors. The use of colors shall be balanced and in the context of the proposed architectural style.

F. Architectural Style. Two primary architectural styles are allowed in the overlay zone as described in general terms below. One of the two styles shall be proposed in conditional use permit applications, except as provided in subsection (F)(3) of this section.

1. **Village Architectural Style.** This style involves the use of wood and composition shingle roof materials, steep pitched (7:12 and greater) gabled roofs, gabled windows, use of dormers in gabled roofs, no mansard roof forms, applied surface detail ornamentation and irregular building forms with a variety of roof peaks.

2. **Contemporary Southwest Architectural Style.** This style involves the use of Spanish/mission style clay roof tiles on a rectangular building form, white stucco walls, arches and arched doorways with wooden beams, low pitched roofs, multi-pane windows and the use of glazed/decorative tiles and tile paving.

3. **Alternative Architectural Styles.** An alternative architectural style may be proposed on a conditional use permit application if it is specifically supported by the enforcement official at the conclusion of the pre-filing procedures outlined in Section 21.208.080. This alternative architectural style may accommodate a reasonable version of a user's corporate architectural style, provided the corporate architectural elements do not dominate the building design so as to create incompatibility in the area; or detract from the overlay zone's objective of ensuring high quality appearances for commercial/visitor-serving uses. Final approval of the proposed alternative architectural style is by the city council as part of the conditional use permit review.

G. Landscaping. Landscaping shall be designed to complement the project's proposed architectural style. Landscape plans shall be consistent with the city's landscape manual. The following landscaping regulations shall apply to development proposals subject to this chapter:

1. **Freestanding Sign Landscape Theme.** Every freestanding sign shall provide adjacent landscaping which promotes a common theme throughout the overlay zone. The freestanding sign and related landscaping theme shall be shown on project landscape exhibits and will consist of, at a minimum:

- (a) Six bird of paradise plants (*Strelitzia reginae*) with a minimum container size of five gallons. These plants shall be located in clusters around the sign;

(b) One Phoenix roebelenii palm tree with a minimum container size of fifteen gallons to be located to one side of the freestanding sign amidst the bird of paradise plant clusters. The roebelenii palm may be replaced with another palm tree species if supported by staff to be consistent with the overlay zone's common landscaped sign theme and approved with the conditional use permit by the city council;

(c) Appropriate ground cover such as agapanthus shrubs, or other similar substitute subject to discretionary review, bark and/or turf in a visually pleasing combination;

(d) The minimum area for the provision of the freestanding sign and corresponding landscaped theme shall be eighty square feet, designed to encompass the minimum perimeter of the sign's base or foundation area;

(e) The above requirements are not necessary for qualified freeway service signage, however, the structural base of allowed freeway service signs shall be adequately located and screened from view by landscaping as part of the conditional use permit application.

2. Required Trees. Parking lot trees shall be provided at a ratio of one tree for every six parking spaces provided. These trees shall be located in planting areas that are outside of required setback areas. All trees shall be a minimum container size of fifteen gallons, however, at least fifty percent of required parking lot trees shall be a minimum of twenty-four-inch box size. All parking lot planter strips and parking island dimensions, configurations and landscaping shall conform to Appendix E of the city's landscape manual, except that for sites eight acres or less in size, individual planting islands with a minimum width of six feet may be provided. Such planting islands shall have a minimum length of thirty feet, however, the minimum length shall not be less than the length of adjacent parking stalls. Street trees required by the street tree requirements of Section IV.D.3 of the landscape manual shall all be twenty-four-inch box sizes. In addition to the street tree requirements of the landscape manual, and except for the slope planting requirements of

Section IV.E.3 of the manual for slopes over eight feet in vertical height, setback landscaping trees shall be provided in clusters at a ratio of one tree for every one thousand square feet of setback area. Except for street trees which shall be twenty-four-inch box sizes, setback area trees shall be a minimum container size of fifteen gallons, however, at least fifty percent of required setback area trees shall be a minimum of twenty-four-inch box sizes. For the calculation of setback areas, multiply the length of the setback times twenty feet; for interior lot and freeway setbacks, multiply the length of the setback times ten feet. The use of existing on-site trees may be considered to replace required trees at a 1:1 ratio, on a case-by-case, site-by-site basis. For existing trees to be considered, landscape plans shall indicate tree caliper width at three feet above existing grade, and photographs of the subject trees shall be submitted.

3. Screening of Areas. The following areas shall be specifically designed to be screened from public points of view:

(a) Parking Areas. All surface parking areas shall be screened by the use of forty-two inch high screen walls to be complemented with landscaping in front of the walls within setback areas. Screen walls shall be architecturally finished to complement the project's architecture and shall provide an architectural cap on top of the wall. The screening wall height may reduce to thirty inches to comply with engineering sight distance requirements as necessary. Vines and attaching plant forms shall be used to further obscure the screening walls. The use of existing trees and/or grade separations to screen parking areas may be considered on a case-by-case, site-by-site basis.

(b) Loading/Delivery/Trash Enclosure Areas. All areas used for loading activities, receiving deliveries and trash enclosure locations shall be located onsite so as to be screened from public points of view. Landscaping may assist this objective but is secondary to locating these areas onsite and/or using solid masonry walls, to minimize visibility.

4. Maintenance. All landscaped areas shall be maintained in a healthy, thriving manner. Failure to

maintain such areas in conformance with approved landscape plans and concepts, may result in administrative fines and/or revocation or other discretionary action pursuant to the performance monitoring condition (see Section 21.208.120) or other enforcement procedures in this chapter.

H. Use Separation Standards. The uses below are subject to use separations standards.

1. Gas Stations, Gas Stations/Mini-Marts.

(a) Location. New gas stations or gas stations/mini-marts shall only be permitted at intersections where at least one of the streets is classified as a prime, major or secondary arterial on the general plan. A maximum of two stations may be allowed at each such intersection. Where a T-intersection is involved, a maximum of one station may be allowed. The proposed site may not adjoin any residential property.

(b) Lot Dimensions. The minimum lot size, or the minimum area exclusively designated for this use in a mixed use project, shall be fifteen thousand square feet. Street frontage along the nonarterial roadway shall be a minimum of one hundred fifty feet.

(c) Design Criteria. On corner lots, no access shall be made with the prime or major arterial roadway; no driveway access shall be allowed within one hundred feet of a prime or major arterial roadway intersection and may be limited to a right in, right out only access; and, fuel delivery circulation design shall be accommodated onsite on a case-by-case, site-by-site basis.

2. Motels/Hotels. Commercial/visitor-serving motel and hotel uses shall maintain a minimum separation of six hundred feet; business hotels or motels located on P-M zoned property serving the adjacent industrial office area, and not the general public, are not subject to the separation standard. Use separation standards shall be measured from proposed building edge to existing, or approved, building edge. Separation distances shall be measured at points of closest proximity to reveal the minimum separation involved. Individual motel or hotel buildings that comprise one motel or hotel use are not subject to the six hundred foot separation

standard. For project sites of six acres and larger: Up to two motels or hotels may be located onsite provided that a minimum setback of two hundred feet shall be provided from any public street(s) adjacent to the project site; and the two motel or hotel uses/structures have a minimum separation of one hundred fifty feet. All motel/hotel structures, regardless of project site acreage, shall maintain a minimum separation of six hundred feet from any residentially zoned property line. (Ord. NS-485 § 1 (part), 1999)

21.208.110 Required findings.

In addition to the findings required for the granting of a conditional use permit pursuant to Section 21.42.020, conditional use permits issued pursuant to this chapter are subject to the following findings prior to approval:

A. That the proposed project is adequately designed to accommodate the high percentage of visitor, tourist and shuttle bus/alternative transportation users anticipated given the proposed use and site location within the overlay zone;

B. That the building forms, building colors and building materials combine to provide an architectural style of development that will add to the objective of high quality architecture and building design within the overlay zone; and

C. That the project complies with all development and design criteria of the overlay zone.

D. For gas stations, motel, hotel or restaurant uses on a planned industrial zoned property: That the proposed use is commercial in nature and therefore subject to the overlay zone, however, the proposed use is consistent with the intent and purpose of the P-M zone whose primary purpose is not to cater directly to the general public, and allows certain commercial uses which cater to, and are ancillary to the uses allowed in the P-M zone,

E. For recreation vehicle (RV) parks, overnight RV parking, campgrounds or overnight campsite uses: That the proposed use complies with all the provisions of Section 21.42.010(2)(H)(a) through (e) of this title. (Ord. NS-485 § 1 (part), 1999)

21.208.120 Performance monitoring condition.

Projects shall be continuously monitored, including at least one formal annual review, to assure long term compliance with all conditions of approval, compatibility with adjacent properties, enforce sign regulations and provide a basis for recommending approval of subsequent permit extension requests. To achieve this, the following condition shall be placed on permits within the overlay zone:

If, at any time, the City Council, Planning Commission or Planning Director determine that there has been, or may be, a violation of the findings or conditions of this conditional use permit, or of the Municipal Code regulations, a public hearing may be held before the City Council to review this permit. At said hearing, the City Council may add additional conditions, recommend additional enforcement actions, or revoke the permit entirely, as necessary to ensure compliance with the municipal code and the intent and purposes of the Commercial/Visitor-Serving Overlay Zone, and to provide for the health, safety and general welfare of the City.

(Ord. NS-485 § 1 (part), 1999)

21.208.130 Existing uses, building permits and business licenses.

For existing uses that propose a change in use, apply for a building permit or apply for a new business license, the provisions of this chapter shall not apply provided that all of the following criteria are met: the proposal is consistent with the uses allowed by the site development plan or specific plan, if any, applicable to the subject site; the proposal does not invoke a higher parking standard pursuant to Section 21.208.100(A) of this chapter; and, the proposal does not involve an increase of greater than two hundred square feet to existing square footage. For such proposals, the additional two hundred square feet of area shall be parked subject to the parking standards of this chapter. Existing structures that propose demolition and redevelopment may be rebuilt to the same square footage as allowed by a

valid entitlement prior to the effective date of the ordinance codified in this chapter, or up to an additional two hundred square feet, without being subject to the requirements of this chapter, provided there is no increase in the degree of nonconformity with regards to building setbacks, parking or signage. If a higher parking standard, or more than two hundred square feet of increased square footage is involved, the new, or intensified, portion of the existing use shall be subject to all of the procedures, standards and conditional use permit requirements of this chapter. Existing sign programs and related sign permits are not subject to the provisions of this overlay zone, except that if any existing use proposes an amendment to its existing, approved sign program to increase overall signage allowance, or to increase or alter approved sign locations, then the entire sign program including existing signs shall be subject to the sign standards of Section 21.208.100 (B) of this chapter pursuant to the normal processing of such sign program amendment. (Ord. NS-485 § 1 (part), 1999)

21.208.140 Administrative enforcement powers.

A. The enforcement agency and enforcement official can exercise any enforcement powers as provided in Chapter 1.08 of this code. In addition to the general enforcement powers provided in Chapter 1.08 of this code, the enforcement agency and enforcement official have the authority to utilize the following administrative remedies as may be necessary to enforce this chapter:

B. Civil Penalties. Any person who violates any of the provisions of this chapter or any condition of a conditional use permit issued pursuant to this Chapter shall be liable for a civil penalty not to exceed one thousand dollars for each day such a violation exists. The violator shall be charged for the full costs of any investigation, inspection or monitoring survey which led to the detection of any such violation, for abatement costs, and for the reasonable costs of preparing and bringing legal action under this subsection. In addition to any other applicable procedures, the enforcement agency may

utilize the lien procedures listed in Sections 21.208.150(C)(5) and (D)(2) and Section 21.208.160 (B)(3) to enforce the violator's liability. (Ord. NS-485 § 1 (part), 1999)

21.208.150 Administrative notice, hearing, and appeal procedures.

A. Unless otherwise provided herein, any notice required to be given by the enforcement official under this chapter shall be in writing and served in person or by registered or certified mail. If served by mail, the notice shall be sent to the last address known to the enforcement official. Where the address is unknown, service may be made upon the owner of record of the property involved. Such notice shall be deemed to have been given at the time of deposit, postage prepaid, in a facility regularly serviced by the United States Postal Service whether or not the registered or certified mail is accepted.

B. When the enforcement official determines that a violation of one or more provisions of this chapter or any condition of a conditional use permit issued pursuant to this chapter exists or has occurred, any violator(s) or property owner(s) of record shall be served by the enforcement official with a written notice and order. The notice and order shall state the municipal code section or the condition violated, describe how violated, the location and date(s) of the violation(s), and describe the corrective action required. The notice and order shall require immediate corrective action by the violator(s) or property owner(s); where the violation is a continuing violation which does not create an immediate danger to health or safety, the notice shall provide a reasonable time, not less than three working days, to correct or otherwise remedy the violation, prior to the imposition of administrative fines. The notice and order shall also explain the consequences of failure to comply, including that civil penalties shall begin to immediately accrue if compliance is not immediately achieved (or, if applicable within three days from the date the notice and order is issued). The notice and order shall identify all hearing rights. The

enforcement official may propose any enforcement action reasonably necessary to abate the violation.

C. If cure or abatement of the violation(s) is not immediately achieved (or, if applicable within three days) from the date the notice and order is issued, the enforcement official shall request the city manager to appoint a hearing officer and fix a date, time and place for hearing. The enforcement official shall give written notice thereof to the violator(s) or owner(s) of record, at least ten days prior to the date for hearing.

1. The hearing officer shall consider any written or oral evidence presented to determine whether the violation(s) exists, and/or civil penalties should be imposed, consistent with rules and procedures for the conduct of hearings and rendering of decisions established and promulgated by the city manager.

2. In determining whether action should be taken or the amount of a civil penalty to be imposed, the hearing officer may consider any of the following factors:

- (a) Duration of the violation(s);
- (b) Frequency or recurrence;
- (c) Seriousness;
- (d) History;
- (e) Violator's conduct after notice and order;
- (f) Good faith effort to comply;
- (g) Economic impact of the penalty on the violator(s);
- (h) Impact of the violation on the community;
- (i) Any other factor which justice may require.

3. If the violator(s) or owner(s) of record fail to attend the hearing, it shall constitute a waiver of the right to a hearing and adjudication of all or any portion of the notice and order.

4. The hearing officer shall render a written decision within ten days of the close of the hearing, including findings of fact and conclusions of law, identifying the time frame involved and the factors considered in assessing civil penalties, if any. The decision shall be effective immediately unless otherwise stated in the decision. The hearing officer shall cause the decision to be served on the enforcement official and all participating violators or owners of record.

5. If the persons assessed civil penalties fail to pay them within the time specified in the hearing officer's decision, the unpaid amount constitutes either a personal obligation of the person assessed or a lien upon the real property on which the violation occurred, in the discretion of the enforcement official. If the violation(s) is not corrected as directed the civil penalty continues to accrue on a daily basis. Civil penalties may not exceed one hundred thousand dollars in the aggregate. When the violation is subsequently corrected, the enforcement official shall notify the violator(s) and/or owner(s) of record of the outstanding civil penalties and provide an opportunity for hearing if the amount(s) is disputed within ten days from such notice.

D. Judicial Appeal of Hearing Officer Determination.

1. Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure, within twenty days after service of the final administrative order or decision of the hearing officer is made in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A court proceeding under this section is a limited civil case authorized by Government Code Section 53069.4. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

2. The enforcement official shall take all appropriate legal steps to collect these obligations, including referral to the city attorney for commencement of a civil action to recover said funds. If collected as a lien, the enforcement official shall cause a notice of lien to be filed with the county recorder, inform the county auditor and county recorder of the amount of the obligation, a description of the real property upon which the lien is to be recovered, and the name of the agency to which the obligation is to be paid. Upon payment in full, the enforcement

official shall file a release of lien with the county recorder. (Ord. NS-485 § 1 (part), 1999)

21.208.160 Judicial enforcement.

A. Criminal Penalties. Any person who violates any provision of this chapter or any condition of a conditional use permit issued pursuant to this chapter is guilty of a misdemeanor.

B. Injunction/Abatement of Public Nuisance—Violations Deemed a Public Nuisance.

1. In addition to the other civil and criminal penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this chapter or any condition of a conditional use permit issued pursuant to this chapter, is a threat to the public health, safety and welfare and is declared and deemed a public nuisance, which may be summarily abated and/or restored as directed by the enforcement official in accordance with the procedures identified in Chapter 6.16.

2. A civil action to abate, enjoin or otherwise compel the cessation of such nuisance may also be taken by the city, if necessary. The enforcement official may also cause the city to seek a petition to the Superior Court for the issuance of a preliminary or permanent injunction, or both, or an action to abate a public nuisance, as may be appropriate.

3. The full cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property in accordance with the procedures set forth in Section 21.208.140.

C. Other Civil Action. Whenever a notice and order or hearing officer's decision is not complied with, the city attorney may, at the request of the enforcement official, initiate any appropriate civil action in a court of competent jurisdiction to enforce such notice and order and decision, including the recovery of any unpaid civil penalties provided herein. (Ord. NS-485 § 1 (part), 1999)

21.208.170 Remedies not exclusive.

Remedies set forth in this chapter are not exclusive but are cumulative to all other civil and criminal penalties provided by law, including, but not

limited to, amortization, abatement, and summary removal pursuant to Chapter 21.41 and or California Business and Professions Code Sections 5412 through 5412.3 and 5492 through 5497. The seeking of such other remedies shall not preclude the simultaneous commencement of proceedings pursuant to this chapter. (Ord. NS-485 § 1 (part), 1999)

21.208.180 Severability.

If any section, subsection, sentence, clause or phrase of the ordinance codified in this chapter is for any reason held to be invalid or unconditional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance codified in this chapter. The city council declares that it would have passed the ordinance codified in this chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any part thereof be declared invalid or unconditional. (Ord. NS-485 § 1 (part), 1999)